

DECLUES, BURKETT & THOMPSON, LLP

EXEMPT FROM FEES PER: GOVERNMENT CODE SECTION 6103

Attorneys at Law

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MIGUEL COLON (employee of a public entity)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN ESPINOZA, an individual,

Plaintiff,

vs.

CITY OF IMPERIAL, a public entity;
MIGUEL COLON, an individual; IRA
GROSSMAN, an individual; and DOES
1 THROUGH 50, inclusive,

Defendants.

CASE NO.: 07CV2218 LAB (RBB)

Complaint Filed: 11/20/07

Judge Larry A. Burns
Courtroom 9

**DEFENDANT CITY OF IMPERIAL'S
REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT
CITY'S OF IMPERIAL'S MOTION TO
STRIKE PORTIONS OF PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Date: June 2, 2008
Time: 11:15 a.m.
Crtrm.: 9

Trial Date: None Assigned

TO PLAINTIFF JOHN ESPINOZA AND HIS ATTORNEYS OF RECORD:

Defendant CITY OF IMPERIAL (a public entity) hereby replies to plaintiff JOHN

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1 ESPINOZA's Opposition to its Motion to Strike portions of First Amended Complaint.

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3 Dated: May 23, 2008

DECLUES, BURKETT & THOMPSON, LLP

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5 BY: s/J. Thompson

JEFFREY P. THOMPSON, Esq.

JENNIFER K. BERNEKING, Esq.

6 Attorneys for Defendants, **CITY OF IMPERIAL,**
7 (a public entity) and **MIGUEL COLON**
(employee of a public entity)
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MEMORANDUM OF POINTS AND AUTHORITIES**1. SUMMARY OF MOTION**

Defendant CITY OF IMPERIAL (a public entity) ("CITY"), seeks to strike paragraphs 42, 52, 63, 77, 85, 95, 114, 125, 133, 151, 156, and 162 in their entirety from plaintiff JOHN ESPINOZA's First Amended Complaint. Additionally, the CITY seeks to strike paragraph 7 of the prayer contained in plaintiff's First Amended Complaint. Specifically, defendant CITY seeks to strike all allegations referencing punitive damages against the CITY on the grounds that punitive damages are not recoverable against a public entity. *See, California Government Code § 818.*

2. THE COURT MAY GRANT THE CITY'S MOTION TO STRIKE IN ITS ENTIRETY AS PLAINTIFF HAS CONCEDED THE MERIT OF THE MOTION

Plaintiff, despite filing an Opposition to the CITY's Motion to Strike, admits the CITY'S motion has merit. (Opp., p. 2, ll. 5-6). Nevertheless, plaintiff contends that striking the paragraphs which form the basis of the motion would remove material portions of the Complaint and unduly prejudice plaintiff. (Opp., p. 2, ll. 6-8). Plaintiff does not, however, provide any support to his contention that he would be prejudiced if the paragraphs are removed from the First Amended Complaint.

Because plaintiff agrees with the merit of the Motion to Strike and has not provided any support for his contention that removal of the paragraphs which are the subject of this motion would prejudice him, the Court may properly grant this motion in its entirety.

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1 **3. CONCLUSION**

2 As there is no substantive Opposition to defendant CITY OF IMPERIAL's Motion
3 to Strike, defendant CITY requests that the Motion to Strike be granted in its entirety
4 without leave to amend.

5 Dated: May 23, 2008

DECLUES, BURKETT & THOMPSON, LLP

6
7 BY: s/J. Thompson

8 JEFFREY P. THOMPSON, Esq.

9 JENNIFER K. BERNEKING, Esq.

10 Attorneys for Defendants, **CITY OF IMPERIAL,**
11 (a public entity) and **MIGUEL COLON**
12 (employee of a public entity)

PROOF OF SERVICE
(C.C.P. section 1013a(3))

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.

I am over the age of 18 and I am not a party to the within action. I am employed by **DECLUES, BURKETT & THOMPSON, LLP**, in the County of Orange, at 17011 Beach Blvd., Ste. 400, Huntington Beach, California, 92647-5995.

On **May 23, 2008**, I served the attached: **DEFENDANT CITY OF IMPERIAL'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT CITY'S OF IMPERIAL'S MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT**

On the interested parties in this action by:

XXX Placing true copies thereof in sealed envelopes, addressed as described below.

Vincent J. Tien
Law Offices of Vincent J. Tien
17291 Irvine Blvd., Suite 150
Tustin, CA 92780

White, Oliver & Amundson
550 West C Street, Suite 950
San Diego, CA 92101
(619) 239-0300

XXX BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Huntington Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

BY PERSONAL SERVICE: I caused such an envelope to be delivered by hand to the offices of the addressees.

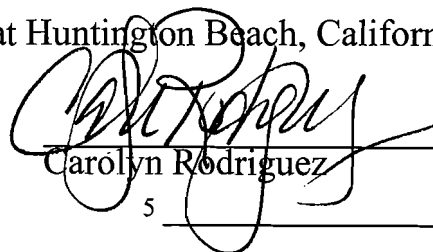
BY FEDERAL EXPRESS (Receipt/Airbill No.: _____)

BY FACSIMILE TRANSMISSION: From FAX NO. (714) 843-9452 to FAX No.: _____ at or about Time, directed to Name. The facsimile machine I used complied with Rule 2003(3), and no error was reported by the machine. Pursuant to Rule 2005(I), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

XXX FEDERAL: I declare I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on **May 23, 2008**, at Huntington Beach, California.



Carolyn Rodriguez